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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.——

GEORGE STRATES, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF J. L. DIMOTSIS, DECEASED, ETC., ET AL.,
Petitioners

VS.

EUGENIA DIMOTSIS, ET. AL., *Respondents*

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, and Supporting Brief

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The petitioners herein pray that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above cause on March 20, 1940, affirming the judgment of the United States District Court for the Southern District of Texas.

Opinions Below.

The opinion of the United States District Court for the Southern District of Texas appears in the record at pages 81-113. The opinion of the Circuit Court of Appeals for the Fifth Circuit appears in the record at pages 251-255.

Jurisdiction.

The judgment to be reviewed was entered on March 20, 1940, (R. 251-255). The jurisdiction of this Court is invoked under Section No. 347 of the Judicial Code as amended by the Act of February 13, 1925, United States Code, Title 28, Section 347, and that portion of Rule 35, Paragraph 5 of the Rules of the Supreme Court of the United States, providing jurisdiction.

"Where a Circuit Court of Appeals * * * has decided an important question of local law in a way probably in conflict with applicable local decisions."

Questions Presented.

1. The proceedings resulting in the judgment of the Circuit Court of Appeals, *supra*, constituted a collateral attack upon the judgment of the probate court ordering a sale of the property in question, (Exhibit "A" R. 66), the order confirming the sale (Exhibit "B" R. 71), and the order approving the final account and discharge of the administrator, (R. 72-73).

2. The fact that the trial court held that the property in question had a value of $70,000.00 at the time it was sold under foreclosure proceedings for the sum of $60,000.00, constituted a collateral attack upon the judgment of the probate court, *supra*, which judgment had adjudicated the value of the property in the order confirming the sale for $60,000.00.

3. After the probate court of Nueces County, Texas, (which court had jurisdiction to administer the estate of respondents herein) made the several orders affecting the property in controversy, namely, the order providing for the foreclosure of the mortgage and the sale of the property, as well as the order approving the sale of the property, which was done by a competent order of the probate court duly adjudicating all matters pertaining to and growing out of the several procedures necessary to vesting the complete title of the property in the Southwestern Life Insurance Company, any proceedings seeking to attack the fairness, justice or legality of any of said orders of the probate court, would be required in law to be done through a direct attack in the probate court of Texas.

4. The trial Court in his findings of fact found that the property in controversy was of the value of $70,000.00 at the time it was sold, and that the approved claims against it at that time were $11,000.00 in excess of the foreclosure sale price of $60,000.00, but further held that at the death of George Dimotsis, the original owner of the property in controversy, his estate was insolvent. Therefore, under

the law of the State of Texas as interpreted by its courts, the heirs of George Dimotsis cannot maintain this cause of action unless it is shown there were no unpaid creditors of the estate, because the approved creditors of the estate are necessary parties to the suit.

5. The sale of the property in question took place on the application of creditors, was ordered by the probate court and confirmed by the probate court, and one of the creditors of the estate purchased the property and obtained fee simple title thereto, and through the orders of the court effecting the sale, all interest in the property, legal and equitable, was divested out of the estate and became the absolute property of one of the creditors, namely, the Southwestern Life Insurance Company. Thereafter the administration was duly closed, and the administrators were duly and legally discharged. Later, and at a time when there was no trust obligation, to-wit: May 1, 1935, George Strates and J. L. Dimotsis, purchased the property from the insurance company. And no fraud having been proven by the evidence before the trial judge, there being no trust obligation because of the discharge of the administrators, no trust could legally be impressed upon the property.

6. The letter written by J. L. Dimotsis to Mrs. Eugenia Dimotsis, dated May 28, 1935, was insufficient as evidence as tending to support the claim of constructive trust, because at the time of the writing of the letter the estate had been divested of all title

to the property, both legal and equitable, and there was no fiduciary or trust relation existing between the said George Strates and J. L. Dimotsis and the said Mrs. Eugenia Dimotsis.

7. It was the duty of the administrators, under the law, to keep the building in controversy in proper repair, and the administrators in doing so should not have been held to have had ulterior or improper motives, such as furtherance of a scheme and desire to obtain the property for their own use and benefit.

Statement of Facts.

For the purposes of the supporting brief to follow, we take from the opinion of the Circuit Court statement of the essential matters necessary to form the basis of our brief and argument, as follows:

"This suit was brought by the surviving heirs of George Dimotsis to impress a trust upon certain real estate located in Corpus Christi, Texas. The court made findings of fact and conclusions of law and rendered judgment in favor of the plaintiffs, appellees.

"George Dimotsis came to this country from Greece in 1925. He went into business at Corpus Christi and was living there at the time of his death on July 10, 1933. His surviving heirs were his wife, Mrs. Eugenia Dimotsis, and two minor children, Katherine G. Dimotsis and Lambros G. Dimotsis, all resident citizens of Greece.

"George Dimotsis left a will which disposed of certain personal property but which did not dispose of the real estate involved in this suit. The will was probated, and George Strates, a nephew of George Dimotsis, and J. L. Dimotsis, his half brother, were

appointed administrators of the estate. They qualified and took possession of all the property belonging to the estate. J. L. Dimotsis, in addition to serving as administrator, served as guardian of the estate of the minor children.

"At the time of George Dimotsis' death the building here involved was subject to a deed of trust in favor of Southwestern Life Insurance Company to secure a principal indebtedness of $50,000.00. During the administration George Strates and J. L. Dimotsis experienced difficulties in refinancing the first lien indebtedness. During all this time, however, they assured Mrs. Dimotsis, by letters, that they would look after and protect her interests. J. L. Dimotsis wrote most of the letters to the widow, but Strates knew the contents of the letters and authorized and acquiesced in the representations made. J. L. Dimotsis likewise knew of and acquiesced in all representations made by Strates. Mrs. Eugenia Dimotsis, who neither spoke nor understood the English language, placed trust and confidence in these men and relied upon their representations. * * *

"On January 10, 1935, the Southwestern Life Insurance Company filed application in the Probate Court for an order authorizing the administrators to sell the property to satisfy its debt which then aggregated $59,041.51. The probate Court ordered the sale and on the first Tuesday in March, 1935, the administrators sold the property to the insurance Company. On April 16, 1935, the Probate Court approved the sale, discharged the administrators, and closed the estate. Immediately thereafter and on May 1, 1935, George Strates and J. L. Dimotsis purchased the property from the insurance company, giving their notes for the purchase price. * * *

"The court found that at the time of the administrators' sale the property had a reasonable market

value of $70,000.00 and that its actual value was greater."

WHEREFORE petitioners pray that the Writ of Certiorari be granted directed to the Circuit Court of Appeals for the Fifth Circuit, and in conformity with law to the end that this cause may be reviewed and determined by this Court, and for such relief as these petitioners may be entitled to in the premises.

W. A. KEELING,
E. B. WARD,
Attorneys for Petitioners